

## **EXHIBIT B**

## LONG ISLAND / TOWNS

# Islip Town knew about dumping at Roberto Clemente Park, records show



Roberto Clemente Park in Brentwood remained closed as air monitors were being installed after findings of the illegal dumping of asbestos materials, Friday, May 9, 2014. Photo Credit: Randee Daddona

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Islip Town officials were told as early as November that dumping on a large scale was going on in Roberto Clemente Park, months after work began to improve soccer fields in the facility.

Among those who sounded a warning was a park ranger who noticed debris being unloaded at the Brentwood site, a local legislator who passed on complaints of residents, and the residents themselves.

In addition, the town's own video cameras in March captured 48 truckloads of debris entering the park and dumping the material, sources said.

Five months before the Suffolk County district attorney announced last week that 32,000 tons of asbestos-laden debris had been dumped in the park, Brendan Kearns, the ranger, observed on Nov. 21 that about "70 piles of rocky dirt [had been] dropped on soccer fields" at the town-owned facility, according to an incident report obtained by Newsday.

The dirt was "unscreened and contained large boulders" -- material unsuited for the fields -- according to the report written on Nov. 25.

"Driver states that dirt is coming from Nassau Co. [County] and he's being told by his boss to drop same at Timberline Park," the report states, referring to the former name for Roberto Clemente Park, which is still commonly used.

Kearns wrote in the report, which was sent to at least two officials in the parks department, that he spoke with the driver of the truck, who said he was from "Datre" and gave a phone number for the firm.

"Datre/Daytree" corporate offices in Ronkonkoma, associated with the family of Thomas and Clara Datre and their son Thomas Datre Jr., who owns a separate company, have been searched by investigators as part of a probe into the dumping that District Attorney Thomas Spota announced last week, sources said.

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Thomas and Clara Datre have been prominent contributors to GOP and Conservative Party coffers in the town and to a number of current town board members and other regional officials, both Democrat and Republican.

Clara Datre, who is a director at the Long Island Builders Institute, a trade group, was an unsuccessful GOP candidate for Islip Town supervisor in 2007. Thomas Datre, her husband,

is chairman of the Islip Town plumbers' examining board.

Andrew Campanelli, an attorney for one of the couple's companies, Daytree at Cortland Square Inc., said his clients "did not bring so much as one grain of sand to that location."

He said there are two trucks titled to the Datres' company that were seen going to the park, but that they may have been operated by their son or grandson. The couple has offered to be interviewed, but the district attorney has not yet taken them up on that offer, Campanelli said.

"My clients had absolutely nothing to do with it," Campanelli said of the dumping operation. "If anyone in fact deliberately placed contaminated materials on this site, then they should be brought to justice."

## Criminal investigation

Kevin Kearon, the attorney for Thomas Datre Jr., said his client's firm, DFF Farm Corp., began dumping "permissible" fill into the park last summer after the town issued the parks department permits to do so.

"Every step of the way, the town was involved," Kearon said. "This was not a rogue, private operation. This was a partnership between the town and private industry."

A 2014 Dun & Bradstreet record cites Clara Datre as a principal of DFF Farm, though Kearon said he understood Thomas Datre Jr. to be the company's sole officer. The company's business address is in upstate Middleburgh, as are other Datre family firms.

The firm's records have been seized by the district attorney, Kearon said, but his client has not yet been interviewed by investigators.

Inez Birbiglia, spokeswoman for the town, declined to comment. Since Spota announced the investigation, Islip elected officials have said they are outraged at the dumping and eager to get the park cleaned up. They have also said they knew nothing about the illegal dumping or who was involved.

At a news conference last week, Spota said illegal dumping began in early summer right after a local church asked the town for help in improving the fields. Spota said at least one "unscrupulous contractor" dumped the debris in the park, some of which contained asbestos concentrations as high as 44 percent. He called the dumping an "environmental nightmare."

In his account of the November incident, Kearns cc'd his report to Brett Robinson, the executive assistant to the parks commissioner, as well as Kenneth Gesseck, an assistant town park maintenance director, according to the document.

The report was also copied to the parks and recreation department, headed by Joseph Montuori, who was forced to resign last week on the same day Spota said a criminal investigation was underway.

Robinson was fired by the town on Friday, a source said.

Public safety reports such as Kearns' about park incidents routinely get faxed to the parks commissioner, another source said. Attempts to reach Kearns, Robinson and Gesseck for comment were unsuccessful. Montuori did not respond to repeated requests for comment.

Asked about Kearns' report, Councilman Anthony Senft -- the town board's liaison to the parks department and to the project in Roberto Clemente Park -- said last week that he was "aware" of the report but had never seen it.

"I can't speculate on who saw a particular memo regardless of who may have been the addressee," said Senft, a Conservative Party member who is running for State Senate with the support of Islip Town Republican Committee chairman Frank Tantone.

Senft declined to answer further questions on the report, referring all questions to the DA.

## Fixing soccer fields

Iglesia de Jesucristo Palabra Miel, a church about one mile north of the park, approached the town in April 2013 and asked for help improving the soccer fields, but town officials said they didn't have the funds, town spokeswoman Birbiglia said.

The two soccer fields were to be refurbished on the Nicholas Fritz Memorial Field, which was named after an Army medic who was killed in Vietnam when he was 21, said his brother, Joe Fritz, of Brentwood. Work at the site began in midsummer without a permit, records show.

Senft said last week that all dealings with the church and the town were handled at the departmental level and he and other members of the town board were unaware of the project until an Aug. 27 news conference where council members stood inside an empty pool at the park and announced a \$1.5 million plan to rehabilitate the pool. The pool had been closed at the beginning of the summer for budgetary concerns.

A Newsday reporter at the time asked Senft and Montuori why there were trucks and piles of dirt in the field and in sump areas of the park, but was told they were not certain what was going on.

Records show that the Islip planning board issued one land clearing permit on Sept. 12, not to a contractor but to the town parks department. The permit was good for 90 days and did not cover the dumping of hazardous waste.

Newsday reported on Sept. 8 that the project had begun without any permits.

In that story, George Hafele, a former deputy parks commissioner, warned of "environmental and safety violations, town liability, or abuses of prevailing wage" that work done without a permit could bring.

Senft, in response to Hafele's concerns, said in the article: "How anyone can characterize this as anything other than a field for young boys and girls to have an opportunity to play sports on is beyond me."

Senft has said that inspections by Town of Islip personnel had been done at the time the permit was issued and periodically after. Spota has said the illegal dumping began in June.

On Sept. 10, the town board adopted a resolution for the donation of labor and materials by the church "for the rehabilitation of the Nicholas Fritz memorial soccer field."

No questions were asked by board members about the project or the resolution. Councilman John C. Cochrane Jr. motioned to approve it while Senft seconded. It was approved 4-0, as Islip Town Supervisor Tom Croci has been overseas serving in the military since July, according to the meeting's minutes.

The park remained open until the third week of January when Assemb. Phil Ramos (D-Brentwood) said he called Acting Islip Town Supervisor Eric Hofmeister on Jan. 21 to alert him of resident complaints about "fill that was coming into the park that appeared to have garbage mixed in," Ramos said. A source said there were numerous complaints to the town by residents near the park.

Suffolk County Legis. Monica Martinez (D-Brentwood) said she called the Town of Islip the next day and spoke to someone in the parks department to inquire about debris filled with rebar, concrete and bricks.

"I had a resident call and actually send me pictures of what was there and I went down to check it out," Martinez said last week. "My concern was the kids sledding down the hill and getting hurt. I actually had one constituent call and say their kid got hurt and I relayed that to Councilman Senft."

The town closed the park on Jan. 24 and started the removal of the debris, Martinez said.

"They claimed they didn't know what it is," she said. "When I spoke to Councilman Senft, he said it was a church trying to create soccer fields and that they had given them the permits but they did not know that they were using this as a storage."

The day the park closed for the cleanup, a Newsday reporter was told by Hofmeister that he "had no knowledge" of Datre or a Datre company being involved. Hofmeister also said he wasn't aware of any reports that the fill was hazardous, but that "perhaps there's foreign debris in it."

Kearon said Datre Jr.'s company removed about 45 loads of the fill from the site in January.

The gates to the park were locked each night and had to be opened by town personnel each morning, Kearon said. "There wasn't a day, a minute that went by that the town was not on-site and nearby and supervising," he said.

Although the soil put in the park by DFF Farm may have been filled with concrete and rebar, those materials are "acceptable under DEC regulation" and it did not contain toxic material, Kearon said.

"There were multiple other vendors there," Kearon said. "And it's going to be difficult to figure out if there's, let say, an area where there's some asbestos or some other contaminant... It's a complex undertaking or an impossible undertaking to figure out who was responsible for doing so."

The state Department of Environmental Conservation investigated the January incident but no tickets were issued, as they found that the debris-filled dirt was being "stored" at the park, officials have said, and because the town told the DEC the fill was being removed.

"The contractor mistakenly believed it could store the debris on-site during the winter months while working on a construction project," the DEC said at the time.

### Senft: Lawsuit to come

Town-installed video cameras at the park show 48 tractor trailers of fill being dumped March 24, sources said, with the trucks bearing the Datre name with lime green cabs. That video has been turned over to Spota's office under subpoena.

Cameras were placed in the park in 2009 after a 13-year-old boy was shot in the face while playing basketball. The 13 cameras were to digitally record people entering and leaving the park as well as footage of its activity areas, according to records.

The equipment, although not monitored, can keep footage for up to 30 days, according to Birbiglia. And, Senft said, "Something would have to give rise to review the tapes."

The town would not comment on what can or cannot be seen on the recordings.

The DEC began investigating in March after it received a new complaint of dumping and illegal fill, the agency has said. Photographs were taken and the agency in April received confirmation from its Division of Materials Management staff that the fill constituted a solid waste violation. The DEC alerted the district attorney's office in early April.

The town officially closed the park on April 23, two days after the district attorney subpoenaed the town for all records relating to construction projects at the park dating to June.

"This debris was placed illegally without the permission of the Town of Islip by one or more contractors who were hired by a local community organization to construct soccer fields," Senft said at a news conference Tuesday outside the park's locked gates. The district attorney cleared the church of any wrongdoing the same day.

Nancy Alvarez, of the church, said Friday she would not comment and referred questions to the town. A man at the church last week said the pastor was in Guatemala and congregants were asked not to speak about the project.

Senft has said that the town is preparing to file civil suits against the construction companies responsible for the dumping, including civil orders of protection that would bar the companies from selling off assets before judgments are rendered.

On April 24, the town sent notices to four insurance companies of contractors who filed paperwork with the town to do work at the park, although the town said in January they did not know who the contractors were. Neither Senft nor Islip Town Attorney Robert Cicale last week would reveal the contractors that had filed the paperwork, citing the ongoing criminal investigation.

Town of Islip parks department workers have been interviewed by DA investigators in the past few days and the department's computer equipment has been seized, sources said.

## Unclear what's in there

The dumping has drawn outrage and worry from Brentwood residents and community leaders, who say the town kept them in the dark about what was going on in the park.

"All this came to light and now our kids don't have a place to go again," Martinez said. "I'm not happy. I'm definitely upset. It's not fair and they think that busing our kids over to another park is a solution and it's not."

On Thursday, the town began hand delivering and mailing out almost 2,000 letters in English to residents living within a half-mile radius of the park, giving them an update on what has been happening there. Ronkonkoma-based Enviroscience Consultants, hired by the town to oversee the remediation process, installed 16 air monitors at the park Friday to continuously track the air quality levels, Birbiglia said.

What worries Jose Pineda, 43, a construction worker who lives on Pheasant Place about three blocks from the park, is that his three children -- ages 6 to 13 -- had been playing in the park as recently as three weeks ago.

His son, Nestor, 8, has since developed a cough, he said.

"Nobody has told us yet what's going on," Pineda said. "I'm worried. Who knows what's in there? I'm going to the town right now to see what they have to say about the contaminations and what it can do to my kids."

With Candice Ruud

## Timeline

**APRIL 2013** Church asks the town to help fix the soccer fields. Town officials say they don't have the money.

**SUMMER 2013** Work starts on the soccer fields.

**AUG. 27** At a news conference about the pool in the park, a Newsday reporter spots trucks and piles of dirt in other areas of the park. Islip Town Councilman Anthony Senft and Parks Commissioner Joseph Montuori say they don't know what's going on.

**SEPT. 8** Newsday runs a story about work starting at the park without any permits. George Hafele, a former deputy parks commissioner, raises questions about environmental concerns. Senft dismisses those concerns.

**NOV. 21** Town of Islip park ranger Brendan Kearns witnesses dumping of 70 piles of "rocky dirt" on soccer fields by a driver who says he's from "Datre."

**NOV. 25** Kearns files a report with the town; report is cc'ed to two superiors in the parks department as well as the parks department.

**JAN. 21, 2014** Assemb. Phil Ramos (D-Brentwood) alerts the town of fill dumped with "garbage" mixed in.

**JAN. 22** Suffolk County Legis. Monica Martinez (D-Brentwood) gets a complaint that a child was injured while sledding into debris at the park; alerts town parks department and Councilman Senft.

**MARCH 24** 48 truckloads of debris is dumped in the park by "Datre" trucks, as caught by park security cameras.

**MAY 8** Senft says he's "aware" of the November public safety report but has not seen it. Town sends 2,000 letters to surrounding homes about contaminated park.

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